

§ 224.135 Under what circumstances may the Director conduct additional reviews and evaluations?

The Director may conduct additional reviews and evaluations:

- (a) At a tribe's request;
- (b) As part of an investigation undertaken when the tribe notifies the Director of a violation or breach;
- (c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;
- (d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or
- (e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

NONCOMPLIANCE

§ 224.136 How will the Director's report address a tribe's noncompliance?

This section applies if the Director conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the Director determines that the tribe has not complied with Federal law or the terms of a TERA, the Director's written report must include a determination of whether the tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the Director determines that the tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the Director must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

§ 224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the tribe's noncompliance with Federal law or the terms of a TERA, the Director determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Director must:

- (a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset, which could include temporary suspension of the activity that resulted in non-compliance with the TERA or other applicable Federal laws or rescinding approval of all or part of the TERA.

§ 224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?

If the Director finds that a tribe's noncompliance with a Federal law or the terms of a TERA has caused imminent jeopardy to a physical trust asset, the Director must:

(a) Immediately notify the tribe by a telephone call to the Designated Tribal Official followed by a written notice by facsimile to the Designated Tribal Official and the tribal governing body of the imminent jeopardy to a physical trust asset. The notice must contain:

(1) A description of the tribe's noncompliance with Federal law or the terms of the TERA;

(2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe's noncompliance; and

(3) An order to the tribe to cease specific conduct or take specific action deemed necessary by the Director to correct any condition that caused the imminent jeopardy to a physical trust asset.

(b) Issue a finding that the tribe's noncompliance with the TERA or a Federal law has caused imminent jeopardy to a physical trust asset.

§ 224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?

(a) Upon receipt of a notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct outlined in the notice or take specific action the Director orders that is necessary to correct any condition causing the imminent jeopardy; and

(b) Within 5 days of receiving a notice of imminent jeopardy to a physical trust asset, the tribe must submit a written response to the Director that:

(1) Responds to the Director's finding that the tribe has failed to comply with a Federal law or the terms of the TERA;

(2) Responds to the Director's finding of imminent jeopardy to a physical trust asset;

(3) Describes the status of the tribe's cessation of specific conduct or specific action the tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and

(4) Describes what further actions, if any, the tribe proposes to take to correct any condition, cited in the notice, causing imminent jeopardy to a physical trust asset.

§ 224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?

If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset, which may include the immediate reassumption of all activities the tribe assumed under the TERA. The procedures in subpart G of this part do not apply to reassumption under this section.

§ 224.141 What must the Secretary do if the tribe responds to the Director's order?

(a) If the tribe responds in a timely manner to the Director's order under § 224.138, the Secretary must:

(1) Evaluate the tribe's response;

(2) Determine whether or not the tribe has complied with the TERA and the Federal law cited in the notice; and

(3) If the Secretary determines, after reviewing the tribe's response, that the tribe has not complied with the TERA or with a Federal law, the Secretary will determine whether the noncompliance caused imminent jeopardy to a physical trust asset.

(b) If the Secretary determines that the tribe's noncompliance has caused imminent jeopardy to a physical trust asset, the Secretary may:

(1) Order the tribe to take any action the Secretary deems necessary to comply with the TERA or Federal law and to protect the physical trust asset; or

(2) Take any action the Secretary deems necessary to protect the physical trust asset, including reassumption under subpart G of this part.

(c) If the Secretary determines, after reviewing the tribe's response, that the tribe has complied with the TERA and with Federal law, the Secretary will withdraw the Director's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the tribe's non-compliance with a TERA or violation of a Federal law.

Subpart G—Reassumption

§ 224.150 What is the purpose of this subpart?

This subpart explains when and how the Secretary may reassume all activities included within a TERA without the consent of the tribe.

§ 224.151 When may the Secretary reassume activities?

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under a TERA in accordance with this subpart. The Secretary may also reassume activities approved under a TERA in response to a petition from an interested party under subpart E of this part. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under a TERA.

§ 224.152 Must the Secretary always reassume the activities upon a finding of imminent jeopardy to a physical trust asset?

(a) The Secretary may take whatever actions the Secretary deems necessary to protect the physical trust asset. At the discretion of the Secretary, these actions may include reassumption of the activities a tribe assumed under a TERA.

(b) If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary must immediately reassume all activities the tribe assumed under the